Supreme Court, U.S.
FILED
OCT 5 1992
OFFICE OF THE CLERK

No. 91-1188

In The

Supreme Court of the United States

October Term, 1992

JAMES ROWLAND, et al.,

Petitioners,

v.

CALIFORNIA MEN'S COLONY, UNIT II
MEN'S ADVISORY COUNCIL,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

RESPONDENT'S SUPPLEMENTAL BRIEF

CHARLES D. WEISSELBERG
Counsel of Record
MICHAEL J. BRENNAN
DENNIS E. CURTIS
DENISE MEYER
Post-Conviction Justice Project
University of Southern
California Law Center
University Park
Los Angeles, California
90089-0071
Telephone: (213) 740-2528

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

RESPONDENT'S SUPPLEMENTAL BRIEF

THIS COURT SHOULD CONSTRUE 28 U.S.C. § 1915(a) IN THE SAME MANNER AS THE STATUTE IN *PATTERSON V. SHUMATE*

As explained in the Brief for Respondent, the unambigous language of 28 U.S.C. § 1915(a) permits associations to proceed *in forma pauperis*. This Court may not find, in the silent legislative history to § 1915(a), any evidence contrary to the plain language of § 1915(a). In *Patterson v. Shumate*, ___ U.S. ___, 112 S.Ct. 2242 (1992), decided after the Brief for Respondent was filed, this court interpreted a provision of the Bankruptcy Code. This Court followed the plain language of the statute and refused to find, from a silent legislative history, evidence of a clear legislative intention contrary to the plain language of the Bankruptcy Code. This court should construe § 1915(a) in the same manner as the statute at issue in *Patterson*.

The question in *Patterson* was whether a debtor could exclude certain property from a bankruptcy estate. A provision of the Bankruptcy Code, 11 U.S.C. § 541(c)(2), provides that a debtor could exclude from the estate any interest in a trust that was subject to a transfer restriction enforceable under "applicable nonbankruptcy law." The debtor in *Patterson* had an interest in a pension plan that contained an anti-alienation provision required by ERISA. The issue was whether ERISA was an "applicable nonbankruptcy law" or whether, as the petitioner contended, the phrase was limited exclusively to nonbankruptcy *state* law.

The Court rejected the petitioner's narrow reading of the statute. As the Court held, "[t]he text contains no limitation on 'applicable nonbankruptcy law' relating to the source of law." *Patterson*, 112 S.Ct. at 2246. "Plainly read," the statute encompasses federal law such as ERISA, and "[w]e must enforce the statute according to its terms." *Id.* at 2247 (citation omitted).

The petitioner in *Patterson* also argued that the legislative history to § 541(c)(2) demonstrated Congress' intent to limit that statute only to pension plans that qualified under state law as spendthrift trusts. The Court rejected this argument, noting that the clarity of the statutory language obviated the need to examine the legislative history. *Id.* at 2248. Moreover, even were the Court to examine the legislative history, that history did not reveal any clear legislative intention contrary to the plain language of the statute. *Id.* The legislative history referred to state law, but did not mention ERISA. It thus reflected, at best, a congressional intention to include state law within the meaning of "applicable nonbankruptcy law." The history did not give "a sufficient basis for concluding, in derogation of the statute's clear language, that Congress intended to *exclude* other state and federal law from the provision's scope." *Id.* (emphasis in original).

Patterson should assist this Court in construing 28 U.S.C. § 1915(a). Section 1915(a) says that a "person" may proceed *in forma pauperis* and 1 U.S.C. § 1 expressly states that the word "person" includes associations. *Patterson* makes clear that a statute should not be limited in a manner that is contrary to its plain meaning.

Patterson also provides particular guidance in disposing of the petitioners' legislative history claims. In *Patterson*, the legislative history referred to state spendthrift trusts but the history neither mentioned ERISA nor indicated that "applicable nonbankruptcy law" must be limited to "applicable nonbankruptcy *state* law." Here the legislative history refers to the need to extend *in forma pauperis* status to aliens but the history neither mentions associations nor indicates in any fashion that "person" must be limited to "natural person." Like the legislative history claims in *Patterson*, the petitioners' arguments must be rejected. The legislative history reveals no affirmative and clear legislative intention to give § 1915(a) a meaning contrary to the plain language of the statute.

Respectfully submitted,

/s/ Charles D. Weisselberg
CHARLES D. WEISSELBERG
Counsel of Record
MICHAEL J. BRENNAN
DENNIS E. CURTIS
DENISE MEYER
Post-Conviction Justice Project
University of Southern
California Law Center
University Park
Los Angeles, California
90089-0071
Telephone: (213) 740-2528

Attorneys for Respondent